

**IN THE JUVENILE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

IN THE INTEREST OF

PW

DOB:

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CASE NUMBER:

JUDGE:

MOTION TO SUPPRESS STATEMENT AND ILLEGALLY OBTAINED EVIDENCE

COMES NOW, PW, by and through undersigned counsel, and respectfully moves this Honorable Court prior to adjudication to suppress any and all statements made by him to law enforcement officers after or during his taking into custody and suppress illegally obtained evidence in violation of the Constitution and laws of the United States and State of Georgia and applicable case law, including but not limited to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, Articles I, Section 1, Paragraphs I, XIII, XIV, and XVI of the Constitution of the State of Georgia (1983), *Miranda v. Arizona*, 384 U.S. 436 (1966), *In re: Gault*, 385 U.S. 965 (1966), *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), *Reid v. Georgia*, 448 U.S. 438 (1980), *United States v. Mendenhall*, 446 U.S. 544 (1980), and progeny; and in support states as follows:

1.

PW is charged with violating O.C.G.A. § 16-11-127.1 by carrying a weapon on school property. The State, by and through the Assistant District Attorney, may attempt to introduce into evidence at adjudication oral and written statements made by P, as well as items seized as a direct result of the custodial interrogation.

2.

On October 23, 2019, P was taken out of class by the principal and the School Resource Officer (SRO) and taken into custody in the SRO's office. P was questioned by the SRO, along with the principal, about whether or not he had any items that he was not supposed to have at the school. The SRO and the principal subsequently searched P's bag and seized one broken airsoft gun and one pellet.

3.

P's statements to the SRO, some of which may incriminate P, were made in the absence of counsel, while P was in custody, and before P was Mirandized.

4.

The non-Mirandized, custodial interrogation took place outside the presence P's parents, and without giving P a chance to talk to them.

5.

Since no *Miranda* warnings were given to P prior to the custodial interrogation, the written and oral statements, along with the items seized, are not admissible for use as part of the State's case. *See Miranda v. Arizona*, 348 U.S. 436 (1966); *In re T.A.G.*, 292 Ga. App. 48 (2008).

6.

Before any statements can be used against an accused in a delinquent case, the burden is on the State to prove that the statements have been freely and voluntarily given. *Jackson v. Denno*, 378 U.S. 368 (1964); *Riley v. State*, 237 Ga. 124 (1976).

7.

Statements and items obtained in violation of *Jackson v. Denno*, *Miranda v. Arizona*, and provisions of the Juvenile Court Code are subject to suppression. *See In re T.A.G.*, 292 Ga. App. 48 (2008).

8.

Absent the information illegally obtained through the custodial interrogation, the SRO lacked probable cause to search P's bag.

9.

Under *State v. Young*, any search involving law enforcement agents requires probable cause, implicating the Fourth Amendment and requiring the exclusionary rule's application. *State v. Young*, 234 Ga. 488 (1975).

10.

The account of one student prior to the custodial interrogation does not rise to the standard of adequate probable cause to conduct a search, thus, information obtained in that search should be suppressed for lack of valid probable cause. *See State v. K.L.M.*, 278 Ga. App. 219 (2006).

11.

Even if probable cause existed for the search, no exception to the warrant requirement was present. *See United States v. Chadwick*, 433 U.S. 1, 13 (1977).

12.

The evidence obtained from P's backpack was the fruit of the non-Mirandized oral and written statements as well as the search lacking in probable cause and lacking a warrant and must be suppressed. *Wong Sun v. United States*, 371 U.S. 471 (1963); *See also Walker v. State*, 299 Ga. App. 788 (2009).

WHEREFORE, PW prays that the Court issue an Order for a pre-trial hearing by the court to determine the voluntariness of all statements made. P further requests the suppression of all statements made to law enforcement officers, as well as any article, thing, or testimony obtained as a result of the illegal search and custodial interrogation of P and for such other relief as the Court may deem proper.

Respectfully Submitted,

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